

Federal Acquisition Streamlining Act (FASA)

One Hundred Third Congress of the United States of America at the Second Session Begun and held at the City of Washington on Tuesday, the twenty-fifth day of January, one thousand nine hundred and ninety-four.

An Act

To revise and streamline the acquisition laws of the Federal Government, and for other purposes. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, Section 1. Short Title.

This Act may be cited as the “Federal Acquisition Streamlining Act of 1994”.

Title I -- Contract Formation

Subtitle A -- Competition Statutes

Part I -- Armed Services Acquisitions

Subpart A -- Competition Requirements

Sec.1001. References to Federal Acquisition Regulation.

Section 2304 of title 10, United States Code, is amended --

- (1) in subsection (a)(1)(A), by striking out “modifications” and all that follows through “note)” and inserting in lieu thereof “Federal Acquisition Regulation”; and
- (2) in subsection (g)(1), by striking out “regulations modified” and all that follows through “note)” and inserting in lieu thereof “Federal Acquisition Regulation”.

Sec.1002. Establishment or Maintenance of Alternative Sources of Supply.

(a) Additional Justification for Establishing or Maintaining Alternative Sources -- Section 2304(b)(1) of such title is amended --

- (1) by striking out “or” at the end of subparagraph (B);
- (2) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon; and
- (3) by adding at the end the following new subparagraphs:

“(D) would ensure the continuous availability of a reliable source of supply of such property or service;

“(E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

“(F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.”.

(b) Prohibition on use of classes of purchases or contracts-Section 2304(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(4) A determination under paragraph (1) may not be made for a class of purchases or contracts.”.

Sec.1003. Clarification of Approval Authority for Use of Procedures Other than Full and Open Competition.

Section 2304(f)(1)(B)(i) of title 10, United States Code, is amended by inserting before the semicolon at the end the following: “or by an official referred to in clause (ii), (iii), or (iv)”.

Sec.1004. Task and Delivery Order Contracts.

(a) **Authority --**

(1) Chapter 137 of title 10, United States Code, is amended by inserting after section 2304 the following new sections:

Sec.2304a. Task and Delivery Order Contracts: General Authority

“(a) **Authority to Award --** Subject to the requirements of this section, section 2304c of this title, and other applicable law, the head of an agency may enter into a task or delivery order contract (as defined in section 2304d of this title) for procurement of services or property.

“(b) **Solicitation --** The solicitation for a task or delivery order contract shall include the following:

“(1) The period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any.

“(2) The maximum quantity or dollar value of the services or property to be procured under the contract.

“(3) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract.

“(c) Applicability of Restriction on use of Noncompetitive Procedures -- The head of an agency may use procedures other than competitive procedures to enter into a task or delivery order contract under this section only if an exception in subsection (c) of section 2304 of this title applies to the contract and the use of such procedures is approved in accordance with subsection (f) of such section.

“(d) Single and Multiple Contract Awards --

(1) The head of an agency may exercise the authority provided in this section --

“(A) to award a single task or delivery order contract; or

“(B) if the solicitation states that the head of the agency has the option to do so, to award separate task or delivery order contracts for the same or similar services or property to two or more sources.

“(2) No determination under section 2304(b) of this title is required for award of multiple task or delivery order contracts under paragraph (1)(B).

“(3) The regulations implementing this subsection shall --

“(A) establish a preference for awarding, to the maximum extent practicable, multiple task or delivery order contracts for the same or similar services or property under the authority of paragraph (1)(B); and

“(B) establish criteria for determining when award of multiple task or delivery order contracts would not be in the best interest of the Federal Government.

“(e) Contract Modifications -- A task or delivery order may not increase the scope, period, or maximum value of the task or delivery order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

“(f) Inapplicability to Contracts for Advisory and Assistance Services -- Except as otherwise specifically provided in section 2304b of this title, this section does not apply to a task or delivery order contract for the procurement of advisory and assistance services (as defined in section 1105(g) of title 31).

“(g) Relationship to Other Contracting Authority -- Nothing in this section may be construed to limit or expand any authority of the head of an agency or the Administrator of General Services to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law.

Sec.2304b. Task Order Contracts: Advisory and Assistance Services

“(a) Authority to Award --

(1) Subject to the requirements of this section, section 2304c of this title, and other applicable law, the head of an agency may enter into a task order contract (as defined in section 2304d of this title) for procurement of advisory and assistance services.

“(2) The head of an agency may enter into a task order contract for procurement of advisory and assistance services only under the authority of this section.

“(b) **Limitation on Contract Period --** The period of a task order contract entered into under this section, including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed five years unless a longer period is specifically authorized in a law that is applicable to such contract.

“(c) **Content of Notice --** The notice required by section 18 of the Office of Federal Procurement Policy Act (41 U.S.C.416) and section 8(e) of the Small Business Act (15 U.S.C.637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed task order contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

“(d) **Required Content of Solicitation and Contract --**

(1) The solicitation for the proposed task order contract shall include the information (regarding services) described in section 2304a(b) of this title.

“(2) A task order contract entered into under this section shall contain the same information that is required by paragraph (1) to be included in the solicitation of offers for that contract.

“(e) **Multiple Awards --**

(1) The head of an agency may, on the basis of one solicitation, award separate task order contracts under this section for the same or similar services to two or more sources if the solicitation states that the head of the agency has the option to do so.

“(2) If, in the case of a task order contract for advisory and assistance services to be entered into under this section, the contract period is to exceed three years and the contract amount is estimated to exceed \$10,000,000 (including all options), the solicitation shall --

“(A) provide for a multiple award authorized under paragraph (1); and

“(B) include a statement that the head of the agency may also elect to award only one task order contract if the head of the agency determines in writing that only one of the offerors is capable of providing the services required at the level of quality required.

“(3) Paragraph (2) does not apply in the case of a solicitation for which the head of the agency concerned determines in writing that, because the services required under the task order contract are unique or highly specialized, it is not practicable to award more than one contract.

“(f) Contract Modifications --

(1) A task order may not increase the scope, period, or maximum value of the task order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

“(2) Unless use of procedures other than competitive procedures is authorized by an exception in subsection (c) of section 2304 of this title and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification.

“(3) Notice regarding the modification shall be provided in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C.416) and section 8(e) of the Small Business Act (15 U.S.C.637(e)).

“(g) Contract Extensions --

(1) Notwithstanding the limitation on the contract period set forth in subsection (b) or in a solicitation or contract pursuant to subsection (e), a task order contract entered into by the head of an agency under this section may be extended on a sole-source basis for a period not exceeding six months if the head of such agency determines that --

“(A) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and “(B) the extension is necessary in order to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

“(2) A task order contract may be extended under the authority of paragraph (1) only once and only in accordance with the limitations and requirements of this subsection.

“(h) Inapplicability to Certain Contracts -- This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the head of an agency entering into such contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

“(i) Advisory and Assistance Services Defined -- In this section, the term “advisory and assistance services” has the meaning given such term in section 1105(g) of title 31.

Sec.2304c. Task and Delivery Order Contracts: Orders

“(a) Issuance of Orders -- The following actions are not required for issuance of a task or delivery order under a task or delivery order contract:

“(1) A separate notice for such order under section 18 of the Office of Federal Procurement Policy Act (41 U.S.C.416) or section 8(e) of the Small Business Act (15 U.S.C.637(e)).

“(2) Except as provided in subsection (b), a competition (or a waiver of competition approved in accordance with section 2304(f) of this title) that is separate from that used for entering into the contract.

“(b) **Multiple Award Contracts** -- When multiple task or delivery order contracts are awarded under section 2304a(d)(1)(B) or 2304b(e) of this title, all contractors awarded such contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task or delivery order in excess of \$2,500 that is to be issued under any of the contracts unless --

“(1) the agency’s need for the services or property ordered is of such unusual urgency that providing such opportunity to all such contractors would result in unacceptable delays in fulfilling that need;

“(2) only one such contractor is capable of providing the services or property required at the level of quality required because the services or property ordered are unique or highly specialized;

“(3) the task or delivery order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task or delivery order already issued on a competitive basis; or

“(4) it is necessary to place the order with a particular contractor in order to satisfy a minimum guarantee.

“(c) **Statement of Work** -- A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.

“(d) **Protests** -- A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.

“(e) **Task And Delivery Order Ombudsman** -- Each head of an agency who awards multiple task or delivery order contracts pursuant to section 2304a(d)(1)(B) or 2304b(e) of this title shall appoint or designate a task and delivery order ombudsman who shall be responsible for reviewing complaints from the contractors on such contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders when required under subsection (b). The task and delivery order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the agency’s competition advocate.

“(f) **Applicability** -- This section applies to task and delivery order contracts entered into under sections 2304a and 2304b of this title.

Sec.2304d. Task and Delivery Order Contracts: Definitions

“In sections 2304a, 2304b, and 2304c of this title:

(1) The term “task order contract” means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

“(2) The term “delivery order contract” means a contract for property that does not procure or specify a firm quantity of property (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of property during the period of the contract.”.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2304 the following new items:

“2304a. Task and Delivery Order Contracts: General Authority.

“2304b. Task Order Contracts: Advisory and Assistance Services.

“2304c. Task and Delivery Order Contracts: Orders.

“2304d. Task and Delivery Order Contracts: Definitions.”.

(b) **Repeal of Superseded Provision** -- Section 2304 of title 10, United States Code, is amended by striking out subsection (j).

(c) **Conforming Amendment for Professional and Technical Services** -- Section 2331 of title 10, United States Code, is amended by striking out subsection (c).

(d) **Provisions Not Affected** -- Nothing in section 2304a, 2304b, 2304c, or 2304d of title 10, United States Code, as added by subsection (a), and nothing in the amendments made by subsections (b) and (c), shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under --

(1) the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C.759)); and

(2) the Brooks Architect-Engineers Act (title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C.541 et seq.)).

Sec.1005. Acquisition of Expert Services.

Section 2304(c)(3) of title 10, United States Code, is amended --

(1) by striking out “or (B)” and inserting in lieu thereof “(B)”; and

(2) by inserting before the semicolon at the end the following: “, or (C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify”.

Subpart B -- Planning, Solicitation, Evaluation, and Award

Sec.1011. Source Selection Factors.

(a) **Content of Solicitation** -- Paragraph (2) of section 2305(a) of title 10, United States Code, is amended --

(1) in subparagraph (A)(i) --

(A) by striking out “(and significant subfactors)” and inserting in lieu thereof “and significant subfactors”; and

(B) by striking out “cost -- or price-related factors, and noncost -- or nonprice-related factors” and inserting in lieu thereof “cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors”;

(2) in subparagraph (A)(ii), by striking out “(and subfactors)” and inserting “and subfactors”; and

(3) in subparagraph (B)(ii), by amending subclause (I) to read as follows:

“(I) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and”.

(b) **Evaluation Factors** -- Such section is further amended by striking out paragraph (3) and inserting in lieu thereof the following:

“(3)

(A) In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency --

“(i) shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

“(ii) shall include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

“(iii) shall disclose to offerors whether all evaluation factors other than cost or price, when combined, are --

- “(I) significantly more important than cost or price;
- “(II) approximately equal in importance to cost or price; or
- “(III) significantly less important than cost or price.

“(B) The regulations implementing clause (iii) of subparagraph (A) may not define the terms “significantly more important” and “significantly less important” as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

“(4) Nothing in this subsection prohibits an agency from --

“(A) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

“(B) stating in a solicitation that award will be made to the offeror that meets the solicitation’s mandatory requirements at the lowest cost or price.”.

Sec.1012. Solicitation Provision Regarding Evaluation of Purchase Options.

Subsection (a) of section 2305 of title 10, United States Code, as amended by section 1011, is further amended by adding at the end the following new paragraph:

“(5) The head of an agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the head of the agency has determined that there is a reasonable likelihood that the options will be exercised.”.

Sec.1013. Prompt Notice of Award.

(a) **Sealed Bid Procedures** -- Paragraph (3) of section 2305(b) of title 10, United States Code, is amended --

(1) in the last sentence, by striking out “transmitting written notice” and inserting in lieu thereof “transmitting, in writing or by electronic means, notice”; and

(2) by adding at the end the following: “Within three days after the date of contract award, the head of the agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.”.

(b) **Competitive Proposals Procedures** -- Paragraph (4)(B) of such section is amended in the second sentence --

(1) by striking out “transmitting written notice” and inserting in lieu thereof “transmitting, in writing or by electronic means, notice”; and

(2) by striking out “shall promptly notify” and inserting in lieu thereof “, within three days after the date of contract award, shall notify, in writing or by electronic means,”.

Sec.1014. Post-Award Debriefings.

Section 2305(b) of title 10, United States Code, is amended --

- (1) by redesignating paragraph (5) as paragraph (6); and
- (2) by inserting after paragraph (4) the following new paragraph (5):

“(5)

(A) When a contract is awarded by the head of an agency on the basis of competitive proposals, an unsuccessful offeror, upon written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award. The head of the agency shall debrief the offeror within, to the maximum extent practicable, five days after receipt of the request by the agency.

“(B) The debriefing shall include, at a minimum --

“(i) the agency’s evaluation of the significant weak or deficient factors in the offeror’s offer;

“(ii) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall evaluated cost and technical rating of the offer of the debriefed offeror;

“(iii) the overall ranking of all offers;

“(iv) a summary of the rationale for the award;

“(v) in the case of a proposal that includes a commercial item that is an end item under the contract, the make and model of the item being provided in accordance with the offer of the contractor awarded the contract; and

“(vi) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

“(C) The debriefing may not include point-by-point comparisons of the debriefed offeror’s offer with other offers and may not disclose any information that is exempt from disclosure under section 552(b) of title 5.

“(D) Each solicitation for competitive proposals shall include a statement that information described in subparagraph (B) may be disclosed in post-award debriefings.

“(E) If, within one year after the date of the contract award and as a result of a successful procurement protest, the agency seeks to fulfill the requirement under the protested contract either on the basis of a new solicitation of offers or on the basis of new best and final offers requested for that contract, the agency shall make available to all offerors --

“(i) the information provided in debriefings under this paragraph regarding the offer of the contractor awarded the contract; and

“(ii) the same information that would have been provided to the original offerors.

“(F) The contracting officer shall include a summary of the debriefing in the contract file.”.

Sec.1015. Protest File.

Section 2305 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(e) ***Protest File*** --

(1) If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, the head of an agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31 and an actual or prospective offeror so requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

“(2) Information exempt from disclosure under section 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

“(3) Regulations implementing this subsection shall be consistent with the regulations regarding the preparation and submission of an agency’s protest file (the so-called “rule 4 file”) for protests to the General Services Board of Contract Appeals under section 111 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.759).”.

Sec.1016. Agency Actions on Protests.

Section 2305 of title 10, United States Code, as amended by section 1015, is further amended by adding at the end the following new subsection:

“(f) **Agency Actions on Protests** -- If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency --

“(1) may take any action set out in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31; and

“(2) may pay costs described in paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2) of such section.”.

Subpart C -- Kinds of Contracts

Sec.1021. Repeal of Requirement for Secretarial Determination Regarding Use of Cost Type or Incentive Contract.

Subsection (c) of section 2306 of title 10, United States Code, is repealed.

Sec.1022. Revision and Reorganization of Multiyear Contracting Authority.

(a) In General --

(1) Chapter 137 of title 10, United States Code, is amended by inserting after section 2306a the following new section:

Sec.2306b. Multiyear Contracts

“(a) **In General --** To the extent that funds are otherwise available for obligation, the head of an agency may enter into multiyear contracts for the purchase of property whenever the head of that agency finds --

“(1) that the use of such a contract will result in substantial savings of the total anticipated costs of carrying out the program through annual contracts;

“(2) that the minimum need for the property to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities;

“(3) that there is a reasonable expectation that throughout the contemplated contract period the head of the agency will request funding for the contract at the level required to avoid contract cancellation;

“(4) that there is a stable design for the property to be acquired and that the technical risks associated with such property are not excessive;

“(5) that the estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic; and

“(6) in the case of a purchase by the Department of Defense, that the use of such a contract will promote the national security of the United States.

“(b) Regulations --

(1) Each official named in paragraph (2) shall prescribe acquisition regulations for the agency or agencies under the jurisdiction of such official to promote the use of multiyear contracting as authorized by subsection (a) in a manner that will allow the most efficient use of multiyear contracting.

“(2)

(A) The Secretary of Defense shall prescribe the regulations applicable to the Department of Defense.

“(B) The Secretary of Transportation shall prescribe the regulations applicable to the Coast Guard, except that the regulations prescribed by the Secretary of Defense shall apply to the Coast Guard when it is operating as a service in the Navy.

“(C) The Administrator of the National Aeronautics and Space Administration shall prescribe the regulations applicable to the National Aeronautics and Space Administration.

“(c) **Contract Cancellations** -- The regulations may provide for cancellation provisions in multiyear contracts to the extent that such provisions are necessary and in the best interests of the United States. The cancellation provisions may include consideration of both recurring and nonrecurring costs of the contractor associated with the production of the items to be delivered under the contract.

“(d) **Participation by Subcontractors, Vendors, and Suppliers** -- In order to broaden the defense industrial base, the regulations shall provide that, to the extent practicable --

“(1) multiyear contracting under paragraph (1) shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, vendors, or suppliers; and

“(2) upon accrual of any payment or other benefit under such a multiyear contract to any subcontractor, vendor, or supplier company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

“(e) **Protection of Existing Authority** -- The regulations shall provide that, to the extent practicable, the administration of this section, and of the regulations prescribed under this section, shall not be carried out in a manner to preclude or curtail the existing ability of an agency --

“(1) to provide for competition in the production of items to be delivered under such a contract; or

“(2) to provide for termination of a prime contract the performance of which is deficient with respect to cost, quality, or schedule.

“(f) **Cancellation or Termination for Insufficient Funding** -- In the event funds are not made available for the continuation of a contract made under this section into a subsequent

fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid from --

“(1) appropriations originally available for the performance of the contract concerned;

“(2) appropriations currently available for procurement of the type of property concerned, and not otherwise obligated; or

“(3) funds appropriated for those payments.

“(g) **Contract Cancellation Ceilings Exceeding \$100,000,000** -- Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of \$100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

“(h) **Defense Acquisitions of Weapon Systems** -- In the case of the Department of Defense, the authority under subsection (a) includes authority to enter into the following multiyear contracts in accordance with this section:

“(1) A multiyear contract for the purchase of a weapon system, items and services associated with a weapon system, and logistics support for a weapon system.

“(2) A multiyear contract for advance procurement of components, parts, and materials necessary to the manufacture of a weapon system, including a multiyear contract for such advance procurement that is entered into in order to achieve economic-lot purchases and more efficient production rates.

“(i) **Defense Acquisitions Specifically Authorized By Law** --

(1) A multiyear contract may not be entered into for any fiscal year under this section for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority unless each of the following conditions is satisfied:

“(A) The Secretary of Defense certifies to Congress that the current five-year defense program fully funds the support costs associated with the multiyear program.

“(B) The proposed multiyear contract provides for production at not less than minimum economic rates given the existing tooling and facilities.

“(2) If for any fiscal year a multiyear contract to be entered into under this section is authorized by law for a particular procurement program and that authorization is subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appears (after negotiations with contractors) that such savings cannot be achieved, but that substantial savings could nevertheless be achieved through the use of a multiyear contract

rather than specified other contracts, the President may submit to Congress a request for relief from the specified cost savings that must be achieved through multiyear contracting for that program. Any such request by the President shall include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions.

“(j) **Defense Contract Options for Varying Quantities** -- The Secretary of Defense may instruct the Secretary of the military department concerned to incorporate into a proposed multiyear contract negotiated priced options for varying the quantities of end items to be procured over the period of the contract.

“(k) **Inapplicability to Automatic Data Processing Contracts** -- This section does not apply to contracts for the purchase of property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C.759) applies.

“(l) **Multiyear Contract Defined** -- For the purposes of this subsection, a multiyear contract is a contract for the purchase of property or services for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.”.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2306a the following:

2306b. Multiyear Contracts.

(b) **Conforming Cross Reference** -- Subsection (h) of section 2306 of title 10, United States Code, is amended to read as follows:

“(h) Multiyear contracting authority is provided in section 2306b of this title.”.

Subpart D -- Miscellaneous

Sec.1031. Repeal of Requirement for Annual Report by Advocates for Competition.

Subsection (c) of section 2318 of title 10, United States Code, is repealed.

Part II -- Civilian Agency Acquisitions

Subpart A -- Competition Requirements

Sec.1051. References to Federal Acquisition Regulation.

Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.253) is amended --

(1) in subsection (a)(1)(A), by striking out “modifications” and all that follows through “of 1984” and inserting in lieu thereof “Federal Acquisition Regulation”; and

(2) in subsection (g)(1), by striking out “regulations modified” and all that follows through “of 1984,” and inserting in lieu thereof “Federal Acquisition Regulation”.

Sec.1052. Establishment or Maintenance of Alternative Sources of Supply.

(a) **Additional Justification for Establishing or Maintaining Alternative Sources** -- Section 303(b)(1) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.253(b)(1)) is amended --

- (1) by striking out “or” at the end of subparagraph (B);
- (2) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon; and
- (3) by adding at the end the following new subparagraphs:

“(D) would ensure the continuous availability of a reliable source of supply of such property or service;

“(E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

“(F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.”.

(b) **Prohibition on Use of Classes of Purchases or Contracts** -- Section 303(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.253(b)) is amended by adding at the end the following:

“(4) A determination under paragraph (1) may not be made for a class of purchases or contracts.”.

Sec.1053. Clarification of Approval Authority for Use of Procedures Other Than Full and Open Competition.

Section 303(f)(1)(B)(i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.253(f)(1)(B)(i)) is amended by inserting before the semicolon at the end the following: “or by an official referred to in clause (ii), (iii), or (iv)”.

Sec.1054. Task and Delivery Order Contracts.

(a) **Authority** -- Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.251 et seq.) is amended by inserting after section 303G the following new sections:

Sec.303H. Task and Delivery Order Contracts: General Authority.

“(a) **Authority to Award** -- Subject to the requirements of this section, section 303J, and other applicable law, the head of an executive agency may enter into a task or delivery order contract (as defined in section 303K) for procurement of services or property.

“(b) **Solicitation** -- The solicitation for a task or delivery order contract shall include the following:

“(1) The period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any.

“(2) The maximum quantity or dollar value of the services or property to be procured under the contract.

“(3) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract.

“(c) **Applicability of Restriction on Use of Noncompetitive Procedures** -- The head of an executive agency may use procedures other than competitive procedures to enter into a task or delivery order contract under this section only if an exception in subsection (c) of section 303 applies to the contract and the use of such procedures is approved in accordance with subsection (f) of such section.

“(d) **Single and Multiple Contract Awards** --

(1) The head of an executive agency may exercise the authority provided in this section --

“(A) to award a single task or delivery order contract; or

“(B) if the solicitation states that the head of the executive agency has the option to do so, to award separate task or delivery order contracts for the same or similar services or property to two or more sources.

“(2) No determination under section 303(b) is required for an award of multiple task or delivery order contracts under paragraph (1)(B).

“(3) The regulations implementing this subsection shall --

“(A) establish a preference for awarding, to the maximum extent practicable, multiple task or delivery order contracts for the same or similar services or property under the authority of paragraph (1)(B); and

“(B) establish criteria for determining when award of multiple task or delivery order contracts would not be in the best interest of the Federal Government.

“(e) **Contract Modifications** -- A task or delivery order may not increase the scope, period, or maximum value of the task or delivery order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

“(f) **Inapplicability to Contracts for Advisory and Assistance Services** -- Except as otherwise specifically provided in section 303I, this section does not apply to a task or delivery order contract for the acquisition of advisory and assistance services (as defined in section 1105(g) of title 31, United States Code).

“(g) **Relationship to Other Contracting Authority** -- Nothing in this section may be construed to limit or expand any authority of the head of an executive agency or the Administrator of General Services to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law.

Sec.303I. Task Order Contracts: Advisory and Assistance Services.

“(a) **Authority to Award** --

(1) Subject to the requirements of this section, section 303J, and other applicable law, the head of an executive agency may enter into a task order contract (as defined in section 303K) for procurement of advisory and assistance services.

“(2) The head of an executive agency may enter into a task order contract for advisory and assistance services only under the authority of this section.

“(b) **Limitation On Contract Period** -- The period of a task order contract entered into under this section, including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed five years unless a longer period is specifically authorized in a law that is applicable to such contract.

“(c) **Content of Notice** -- The notice required by section 18 of the Office of Federal Procurement Policy Act (41 U.S.C.416) and section 8(e) of the Small Business Act (15 U.S.C.637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed task order contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

“(d) **Required Content of Solicitation and Contract** --

(1) The solicitation shall include the information (regarding services) described in section 303H(b).

“(2) A task order contract entered into under this section shall contain the same information that is required by paragraph (1) to be included in the solicitation of offers for that contract.

“(e) **Multiple Awards** --

(1) The head of an executive agency may, on the basis of one solicitation, award separate task order contracts under this section for the same or similar services to two or more sources if the solicitation states that the head of the executive agency has the option to do so.

“(2) If, in the case of a task order contract for advisory and assistance services to be entered into under the authority of this section, the contract period is to exceed three years and the contract amount is estimated to exceed \$10,000,000 (including all options), the solicitation shall --

“(A) provide for a multiple award authorized under paragraph (1); and

“(B) include a statement that the head of the executive agency may also elect to award only one task order contract if the head of the executive agency determines in writing that only one of the offerers is capable of providing the services required at the level of quality required.

“(3) Paragraph (2) does not apply in the case of a solicitation for which the head of the executive agency concerned determines in writing that, because the services required under the contract are unique or highly specialized, it is not practicable to award more than one contract.

“(f) **Contract Modifications** --

(1) A task order may not increase the scope, period, or maximum value of the task order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

“(2) Unless use of procedures other than competitive procedures is authorized by an exception in subsection (c) of section 303 and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification. “(3) Notice regarding the modification shall be provided in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C.416) and section 8(e) of the Small Business Act (15 U.S.C.637(e)).

“(g) **Contract Extensions** --

(1) Notwithstanding the limitation on the contract period set forth in subsection (b) or in a solicitation or contract pursuant to subsection (e), a contract entered into by the head of an executive agency under this section may be extended on a sole-source basis for a period not exceeding six months if the head of such executive agency determines that --

“(A) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

“(B) the extension is necessary in order to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

“(2) A task order contract may be extended under the authority of paragraph (1) only once and only in accordance with the limitations and requirements of this subsection.

“(h) **Inapplicability to Certain Contracts** -- This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the head of the executive agency entering into such contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

“(i) **Advisory and Assistance Services Defined** -- In this section, the term “advisory and assistance services” has the meaning given such term in section 1105(g) of title 31, United States Code.

Sec.303J. Task and Delivery Order Contracts: Orders.

“(a) **Issuance of Orders** -- The following actions are not required for issuance of a task or delivery order under a task or delivery order contract:

“(1) A separate notice for such order under section 18 of the Office of Federal Procurement Policy Act (41 U.S.C.416) or section 8(e) of the Small Business Act (15 U.S.C.637(e)).

“(2) Except as provided in subsection (b), a competition (or a waiver of competition approved in accordance with section 303(f)) that is separate from that used for entering into the contract.

“(b) **Multiple Award Contracts** -- When multiple contracts are awarded under section 303H(d)(1)(B) or 303I(e), all contractors awarded such contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task or delivery order in excess of \$2,500 that is to be issued under any of the contracts unless --

“(1) the executive agency’s need for the services or property ordered is of such unusual urgency that providing such opportunity to all such contractors would result in unacceptable delays in fulfilling that need;

“(2) only one such contractor is capable of providing the services or property required at the level of quality required because the services or property ordered are unique or highly specialized;

“(3) the task or delivery order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task or delivery order already issued on a competitive basis; or

“(4) it is necessary to place the order with a particular contractor in order to satisfy a minimum guarantee.

“(c) **Statement Of Work** -- A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.

“(d) **Protests** -- A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.

“(e) **Task and Delivery Order Ombudsman** -- The head of each executive agency who awards multiple task or delivery order contracts pursuant to section 303H(d)(1)(B) or 303I(e) shall appoint or designate a task and delivery order ombudsman who shall be responsible for reviewing complaints from the contractors on such contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders when required under subsection (b). The task and delivery order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the executive agency’s competition advocate.

“(f) **Applicability** -- This section applies to task and delivery order contracts entered into under sections 303H and 303I.

Sec.303K. Task and Delivery Order Contracts: Definitions.

“In sections 303H, 303I, and 303J:

“(1) The term “task order contract” means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

“(2) The term “delivery order contract” means a contract for property that does not procure or specify a firm quantity of property (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of property during the period of the contract.”.

(b) **Provisions Not Affected** -- Nothing in section 303H, 303I, 303J, or 303K of the Federal Property and Administrative Services Act of 1949, as added by subsection (a), shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under --

(1) the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C.759)); and

(2) the Brooks Architect-Engineers Act (title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C.541 et seq.)).

Sec.1055. Acquisition of Expert Services.

(a) **Exception to Requirement for Use of Competitive Procedures** -- Section 303(c)(3) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.253(c)) is amended -

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(1) by striking out “or (B)” and inserting in lieu thereof “(B)”; and

(2) by inserting before the semicolon at the end the following: “, or (C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify”.

(b) Procurement Notice --

(1) Section 18(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C.416(c)) is amended --

(A) by striking out “or” at the end of subparagraph (D);

(B) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof; “or”; and

(C) by adding at the end the following:

“(F) the procurement is for the services of an expert for use in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.”

(2) Section 8(g)(1) of the Small Business Act (15 U.S.C.637(c)) is amended --

(A) by striking out “or” at the end of subparagraph (D);

(B) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof; “or”; and

(C) by adding at the end the following:

“(F) the procurement is for the services of an expert for use in any litigation or dispute (including preparation for any foreseeable litigation or dispute) that involves or could involve the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.”.

(c) Repeal of Amendments to Uncodified Title -- The following provisions of law are repealed:

(1) Section 532 of Public Law 101-509 (104 Stat.1470) and the provision of law set out in quotes in that section.

(2) Section 529 of Public Law 102-393 (106 Stat.1761) and the matters inserted and added by that section.

Subpart B -- Planning, Solicitation, Evaluation, and Award

Sec.1061. Solicitation, Evaluation, and Award.

(a) **Content of Solicitation** -- Subsection (b) of section 303A of the Federal property and Administrative Services Act of 1949 (41 U.S.C.253a) is amended --

(1) in paragraph (1) --

(A) by amending subparagraph (A) to read as follows:

“(A) all significant factors and significant subfactors which the executive agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and”;

(B) in subparagraph (B), by inserting “and subfactors” after “factors”; and

(2) in paragraph (2)(B), by amending clause (i) to read as follows:

“(i) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and”.

(b) **Evaluation Factors** -- Such section is further amended by adding at the end the following new subsections:

“(c)

(1) In prescribing the evaluation factors to be included in each solicitation for competitive proposals, an executive agency --

“(A) shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

“(B) shall include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

“(C) shall disclose to offerors whether all evaluation factors other than cost or price, when combined, are --

- “(i) significantly more important than cost or price;
- “(ii) approximately equal in importance to cost or price; or
- “(iii) significantly less important than cost or price.

“(2) The regulations implementing subparagraph (C) of paragraph (1) may not define the terms “significantly more important” and “significantly less important” as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

“(d) Nothing in this section prohibits an executive agency from --

“(1) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

“(2) stating in a solicitation that award will be made to the offeror that meets the solicitation’s mandatory requirements at the lowest cost or price.”.

(c) **Evaluation and Award** -- Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.253b) is amended --

(1) in subsection (a), by inserting “, and award a contract,” after “competitive proposals”;

(2) in subsection (c), by inserting “in accordance with subsection (a)” in the second sentence after “shall evaluate the bids”; and

(3) in subsection (d) --

(A) by striking out paragraph (1) and inserting in lieu thereof the following:

“(1) An executive agency shall evaluate competitive proposals in accordance with subsection (a) and may award a contract --

“(A) after discussions with the offerors, provided that written or oral discussions have been conducted with all responsible offerors who submit proposals within the competitive range; or

“(B) based on the proposals received and without discussions with the offerors (other than discussions conducted for the purpose of minor clarification), if, as required by section 303A(b)(2)(B)(i), the solicitation included a statement that proposals are intended to be evaluated, and award made, without discussions, unless discussions are determined to be necessary.”.; (B) by striking out paragraphs (2) and (3) and by redesignating paragraph (4) as paragraph (2); and

(C) in paragraph (2), as redesignated by subparagraph (B), by inserting “cost or” before “price” in the first sentence.

Sec.1062. Solicitation Provision Regarding Evaluation of Purchase Options.

Section 303A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.253a), as amended by section 1061, is further amended by adding at the end the following new subsection:

“(e) An executive agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the executive agency has determined that there is a reasonable likelihood that the options will be exercised.”.

Sec.1063. Prompt Notice of Award.

(a) **Sealed Bid Procedures** -- Subsection (c) of section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.253b) is amended --

- (1) in the last sentence, by striking out “transmitting written notice” and inserting in lieu thereof “transmitting, in writing or by electronic means, notice”; and
- (2) by adding at the end the following: “Within 3 days after the date of contract award, the executive agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.”.

(b) **Competitive Proposals Procedures** -- Paragraph (2) of subsection (d) of such section, as redesignated by section 1061(c)(3)(B), is amended in the second sentence --

- (1) by striking out “transmitting written notice” and inserting in lieu thereof “transmitting, in writing or by electronic means, notice”; and
- (2) by striking out “shall promptly notify” and inserting in lieu thereof “, within 3 days after the date of contract award, shall notify, in writing or by electronic means,”.

Sec.1064. Post-Award Debriefings.

Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.253b) is amended --

- (1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and
- (2) by inserting after subsection (d) the following new subsection (e):

“(e)

- (1) When a contract is awarded by the head of an executive agency on the basis of competitive proposals, an unsuccessful offeror, upon written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award. The executive agency shall debrief the offeror

within, to the maximum extent practicable, 5 days after receipt of the request by the executive agency.

“(2) The debriefing shall include, at a minimum --

“(A) the executive agency’s evaluation of the significant weak or deficient factors in the offeror’s offer;

“(B) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall evaluated cost and technical rating of the offer of the debriefed offeror;

“(C) the overall ranking of all offers;

“(D) a summary of the rationale for the award;

“(E) in the case of a proposal that includes a commercial item that is an end item under the contract, the make and model of the item being provided in accordance with the offer of the contractor awarded the contract; and

“(F) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

“(3) The debriefing may not include point-by-point comparisons of the debriefed offeror’s offer with other offers and may not disclose any information that is exempt from disclosure under section 552(b) of title 5, United States Code.

“(4) Each solicitation for competitive proposals shall include a statement that information described in paragraph (2) may be disclosed in post-award debriefings.

“(5) If, within one year after the date of the contract award and as a result of a successful procurement protest, the executive agency seeks to fulfill the requirement under the protested contract either on the basis of a new solicitation of offers or on the basis of new best and final offers requested for that contract, the head of such executive agency shall make available to all offerors --

“(A) the information provided in debriefings under this subsection regarding the offer of the contractor awarded the contract; and

“(B) the same information that would have been provided to the original offerors.

“(6) The contracting officer shall include a summary of the debriefing in the contract file.”.

Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.253b), as amended by section 1064(1), is further amended by adding at the end the following:

“(h) Protest File --

(1) If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, the head of an executive agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31, United States Code, and an actual or prospective offeror so requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

“(2) Information exempt from disclosure under section 552 of title 5, United States Code, may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

“(3) Regulations implementing this subsection shall be consistent with the regulations regarding the preparation and submission of an agency’s protest file (the so-called “rule 4 file”) for protests to the General Services Board of Contract Appeals under section 111 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.759).”.

Sec.1066. Agency Actions on Protests.

Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.253b), as amended by section 1065, is further amended by adding at the end the following new subsection:

“(i) Agency Actions on Protests -- If, in connection with a protest, the head of an executive agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of such executive agency --

“(1) may take any action set out in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31, United States Code; and

“(2) may pay costs described in paragraph (1) of section 3554(c) of such title within the limits referred to in paragraph (2) of such section.”.

Subpart C -- Kinds of Contracts

Sec.1071. Repeal of Agency Head Determination Regarding Use of Cost Type or Incentive Contract.

Section 304(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.254(b)) is amended by striking out the second sentence.

Sec.1072. Multiyear Contracting Authority.

Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.251 et seq.) is amended by inserting after section 304 the following new section:

Sec.304B. Multiyear Contracts.

“(a) **Authority** -- An executive agency may enter into a multiyear contract for the acquisition of property or services if --

“(1) funds are available and obligated for such contract, for the full period of the contract or for the first fiscal year in which the contract is in effect, and for the estimated costs associated with any necessary termination of such contract; and

“(2) the executive agency determines that --

“(A) the need for the property or services is reasonably firm and continuing over the period of the contract; and

“(B) a multiyear contract will serve the best interests of the United States by encouraging full and open competition or promoting economy in administration, performance, and operation of the agency’s programs.

“(b) **Termination Clause** -- A multiyear contract entered into under the authority of this section shall include a clause that provides that the contract shall be terminated if funds are not made available for the continuation of such contract in any fiscal year covered by the contract. Amounts available for paying termination costs shall remain available for such purpose until the costs associated with termination of the contract are paid.

“(c) **Cancellation Ceiling Notice** -- Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of \$10,000,000 may be awarded, the executive agency shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the Congress, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

“(d) **Multiyear Contract Defined** -- For the purposes of this section, a multiyear contract is a contract for the purchase of property or services for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

“(e) **Rule of Construction** -- Nothing in this section is intended to modify or affect any other provision of law that authorizes multiyear contracts.”.

Sec.1073. Severable Services Contracts Crossing Fiscal Years.

Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.251 et seq.), as amended by section 1054, is further amended by inserting after section 303I the following new section:

Sec.303L. Severable Services Contracts for Periods Crossing Fiscal Years.

“(a) **Authority** -- The head of an executive agency may enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

“(b) **Obligation of Funds** -- Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of subsection (a).”.

Sec.1074. Economy Act Purchases.

(a) **Regulations Required** -- The Federal Acquisition Regulation shall be revised to include regulations governing the exercise of the authority under section 1535 of title 31, United States Code, for Federal agencies to purchase goods and services under contracts entered into or administered by other agencies.

(b) **Content of Regulations** -- The regulations prescribed pursuant to subsection (a) shall --

(1) require that each purchase described in subsection (a) be approved in advance by a contracting officer of the ordering agency with authority to contract for the goods or services to be purchased or by another official in a position specifically designated by regulation to approve such purchase;

(2) provide that such a purchase of goods or services may be made only if --

(A) the purchase is appropriately made under a contract that the agency filling the purchase order entered into, before the purchase order, in order to meet the requirements of such agency for the same or similar goods or services;

(B) the agency filling the purchase order is better qualified to enter into or administer the contract for such goods or services by reason of capabilities or expertise that is not available within the ordering agency; or

(C) the agency or unit filling the order is specifically authorized by law or regulations to purchase such goods or services on behalf of other agencies;

(3) prohibit any such purchase under a contract or other agreement entered into or administered by an agency not covered by the provisions of chapter 137 of title 10, United States Code, or title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.251 et seq.) and not covered by the Federal Acquisition Regulation unless the purchase is approved in advance by the senior procurement official responsible for purchasing by the ordering agency; and (4) prohibit any payment to the agency filling a purchase order of any fee that exceeds the actual cost or, if the actual cost is not known, the estimated cost of entering into and administering the contract or other agreement under which the order is filled.

(c) **Monitoring System Required** -- The Administrator for Federal Procurement Policy shall ensure that, not later than one year after the date of the enactment of this Act, systems for

collecting and evaluating procurement data are capable of collecting and evaluating appropriate data on procurements conducted under the regulations prescribed pursuant to subsection (a).

(d) **Termination** -- This section shall cease to be effective one year after the date on which final regulations prescribed pursuant to subsection (a) take effect.

Part III -- Acquisitions Generally

Sec.1091. Policy Regarding Consideration of Contractor Past Performance.

(a) **Policy** -- Section 2 of the Office of Federal Procurement Policy Act (41 U.S.C.401) is amended --

- (1) by striking out “and” at the end of paragraph (12);
- (2) by striking out the period at the end of paragraph (13) and inserting in lieu thereof “; and”; and
- (3) by adding at the end the following new paragraph:

“(14) establishing policies and procedures that encourage the consideration of the offerors” past performance in the selection of contractors.”.

(b) **Guidance Required** --

- (1) Congress makes the following findings:
 - (A) Past contract performance of an offeror is one of the relevant factors that a contracting official of an executive agency should consider in awarding a contract.
 - (B) It is appropriate for a contracting official to consider past contract performance of an offeror as an indicator of the likelihood that the offeror will successfully perform a contract to be awarded by that official.
- (2) Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C.405) is amended by adding at the end the following:

“(j)

- (1) The Administrator shall prescribe for executive agencies guidance regarding consideration of the past contract performance of offerors in awarding contracts. The guidance shall include --

“(A) standards for evaluating past performance with respect to cost (when appropriate), schedule, compliance with technical or functional specifications, and

other relevant performance factors that facilitate consistent and fair evaluation by all executive agencies;

“(B) policies for the collection and maintenance of information on past contract performance that, to the maximum extent practicable, facilitate automated collection, maintenance, and dissemination of information and provide for ease of collection, maintenance, and dissemination of information by other methods, as necessary;

“(C) policies for ensuring that --

“(i) offerors are afforded an opportunity to submit relevant information on past contract performance, including performance under contracts entered into by the executive agency concerned, contracts entered into by other departments and agencies of the Federal Government, contracts entered into by agencies of State and local governments, and contracts entered into by commercial customers; and

“(ii) such information submitted by offerors is considered; and

“(D) the period for which information on past performance of offerors may be maintained and considered.

“(2) In the case of an offeror with respect to which there is no information on past contract performance or with respect to which information on past contract performance is not available, the offeror may not be evaluated favorably or unfavorably on the factor of past contract performance.”.

Sec.1092. Repeal of Requirement for Annual Report on Competition.

Section 23 of the Office of Federal Procurement Policy Act (41 U.S.C.419) is repealed.

Sec.1093. Discouragement of Nonstandard Contract Clauses.

The Office of Federal Procurement Policy Act (41 U.S.C.401 et seq.) is amended by adding at the end the following new section:

Sec.29. Nonstandard Contract Clauses.

“The Federal Acquisition Regulatory Council shall promulgate regulations to discourage the use of a nonstandard contract clause on a repetitive basis. The regulations shall include provisions that --

“(1) clearly define what types of contract clauses are to be treated as nonstandard clauses; and

“(2) require prior approval for the use of a nonstandard clause on a repetitive basis by an official at a level of responsibility above the contracting officer.”.
